

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1333**

State of Minnesota,
Respondent,

vs.

Aaron Lee Gant,
Appellant.

**Filed August 21, 2023
Reversed and remanded
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-20-2217

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chris Mishek, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Frisch, Judge; and
Halbrooks, Judge.*

SYLLABUS

A criminal defendant must either expressly or impliedly waive the right to counsel
before proceeding pro se at a felony sentencing hearing.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

OPINION

FRISCH, Judge

Appellant argues that he is entitled to a new sentencing hearing because he was not represented by counsel at his sentencing hearing and the district court did not obtain a waiver of his right to counsel. Because appellant did not waive his right to counsel before the district court conducted the sentencing hearing while appellant was unrepresented, we reverse and remand for a new sentencing hearing.

FACTS

In January 2020, respondent State of Minnesota charged appellant Aaron Lee Gant with ten counts of drug and firearm-related offenses. Gant retained private counsel.

In August 2021, Gant and the state entered into a plea agreement whereby Gant agreed to plead guilty to one count of first-degree sale of a controlled substance in violation of Minn. Stat. § 152.021, subd. 1(1) (2018), and one count of possession of ammunition by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2019). The agreement provided that Gant would concurrently serve 85 months in prison for the drug offense and 60 months in prison for the ammunition offense. The plea agreement expressly provided that the state could seek a longer sentence if Gant failed to appear for sentencing. The district court initially scheduled a sentencing hearing for October 2021 but postponed the hearing to January 2022 because Gant fell ill.

Gant failed to appear at the rescheduled sentencing hearing, and the district court issued a warrant for his arrest. Gant was apprehended, and the district court conditionally released Gant pending a new sentencing hearing to occur a few days later. Gant again

failed to appear at the sentencing hearing. At that hearing, Gant's counsel stated, "Mr. Gant did represent he was thinking about discharging me, and I said that's his prerogative, but he is to appear today. And we sent him a text message, and I have not heard from him since." The district court confirmed that Gant had not previously represented to the court his intention to discharge his counsel and declined to address the same on the merits because Gant was not present at the hearing. But the district court stated that it would "make a note that he may intend to do that and also move to withdraw his plea."

Gant was again apprehended and appeared before the district court on June 27, 2022. Counsel informed the district court that he believed that Gant intended to discharge him. Gant confirmed:

Yes, ma'am. And there's several reasons behind, as well as several reasons behind me not even showing up for sentencing. And a lot of these reasons are due to my attorney. And so, yes, I would like to remove my counsel, and I would like to be able to, you know, get new counsel, if that's even an option at this point.

The district court deferred ruling on the request to discharge counsel and any other motions and scheduled sentencing to occur a few days later. Counsel informed the district court that he had attempted to speak with Gant prior to appearing in court but that Gant had declined to communicate with counsel. The following day, counsel moved to withdraw, asserting that "[t]he Defendant refuses to communicate with counsel which has caused a breakdown of the attorney client relationship. Additionally, Defendant himself has represented to the Court on June 27, 2022, that he wished to discharge the undersigned as counsel."

On June 29, the parties appeared for sentencing. Counsel moved to withdraw based on Gant's previously expressed intention to discharge counsel. Gant agreed that he was seeking to discharge counsel and that he had been seeking to do so "for almost a year now." Gant stated that counsel had not made motions that Gant had requested, including a motion to postpone sentencing so that Gant could get his "household in order." The state expressed that it did not "really have a stance on that issue," but requested that sentencing occur that day and that Gant be made aware of such a possibility. The district court acknowledged the state's position and then asked Gant if he "under[stood] what [the state] just informed the Court of?" Gant responded that he did. Gant then told the district court that he had asked counsel to reserve the right to withdraw his plea. The district court did not address the plea-withdrawal request or the state's request to proceed with sentencing and instead redirected Gant to the discrete issue of discharging his counsel. The district court then summarized what had occurred at the hearing thus far and stated:

And then I turned my attention to [the state], saying regardless of what I decide today regarding discharging [your counsel], the [s]tate is going to proceed with sentencing today. And then I see, from what you're telling me, that you have some issues with that, and I'll address that in just a little bit.

Gant responded, "Yes, ma'am," and the district court continued, "But let's go back and talk about discharging, first; okay?" Gant agreed.

The district court asked Gant whether he was under the influence of substances that would affect his decision-making, which Gant denied. The district court asked, "And is it your request to the Court that I grant [counsel's] motion to be discharged moving forward, knowing that [the prosecutor], who represents the State, wants to proceed with sentencing

today? And we'll address that in a little bit. But do you understand that?" Gant agreed. The district court asked, "And you still want me to proceed with discharging [counsel]?" Gant agreed, and the district court discharged counsel.

The district court then turned to Gant's motion to withdraw his plea. In response to the district court's invitation for argument on his plea-withdrawal motion, Gant stated, "So I was just trying to see if I could reserve the right to try to hire new counsel." Gant asserted that he had been trying to remove counsel since "before August" but that counsel "always comes up with a different scenario of why I shouldn't try to remove him as counsel." Gant continued to explain why he wanted to discharge counsel. The district court reiterated that it had granted Gant's request to discharge counsel but did not explicitly address Gant's request to hire new counsel. The district court asked Gant whether he had any other requests, and Gant responded that he had none. The state then presented arguments in opposition to Gant's motion for plea withdrawal. In reply, Gant expressed his uncertainty and lack of awareness of the range of options regarding his plea. The district court denied the motion.¹

The district court then proceeded with sentencing. The district court did not address Gant's request to hire new counsel, and Gant was not represented by counsel during the sentencing hearing. The state argued for a 153-month sentence for the drug offense, representing the maximum presumptive sentence under the Minnesota Sentencing Guidelines based on the severity of the crime, six criminal-history points, one custody-

¹ On appeal, Gant does not challenge the denial of his motion to withdraw his plea.

status point, and a three-month custody-status enhancement. Gant argued that his failures to appear at sentencing should not enhance his sentence. The district court sentenced Gant to concurrent sentences of 128 months' imprisonment for the drug offense and 60 months' imprisonment for the ammunition offense.

Gant appeals.

ISSUE

Did the district court err in conducting a felony sentencing hearing with a pro se defendant without first obtaining from the defendant a waiver of the right to counsel?

ANALYSIS

Gant argues that the district court erred in conducting his sentencing hearing because he was not represented by counsel, the district court did not obtain a waiver of counsel from him, and the facts and circumstances do not support a conclusion that he waived his right to counsel. We agree.

The United States and Minnesota Constitutions guarantee a criminal defendant the right to counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. This right applies to all critical stages of a criminal proceeding, including sentencing. *State v. Rosenbush*, 931 N.W.2d 91, 94-95 (Minn. 2019) (reasoning that the supreme court has held that the right to counsel “applies at all critical stages of a criminal prosecution” (quotation omitted)); *see State v. Maddox*, 825 N.W.2d 140, 144, 146 (Minn. App. 2013) (citing first *Gardner v. Florida*, 430 U.S. 349, 358 (1977); then *State v. Hughes*, 742 N.W.2d 460, 463 (Minn. App. 2007), *aff'd*, 758 N.W.2d 577 (Minn. 2008)) (reasoning that the United States Supreme Court has recognized sentencing as a critical stage in a criminal proceeding and

holding that because restitution is part of a criminal sentence, restitution is also a critical stage of a criminal proceeding). A defendant may waive the right to counsel but must do so knowingly, intelligently, and voluntarily. *State v. Rhoads*, 813 N.W.2d 880, 885 (Minn. 2012). The district court has a duty to ensure a valid waiver of the right to counsel. *State v. Hawanchak*, 669 N.W.2d 912, 914 (Minn. App. 2003) (quoting *State v. Krejci*, 458 N.W.2d 407, 412 (Minn. 1990)).

“We review a finding that a defendant validly waived his right to counsel for clear error.” *State v. Bonkowske*, 957 N.W.2d 437, 440 (Minn. App. 2021) (citing *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998)). “When the facts are undisputed, however, the question of whether a waiver-of-counsel was knowing and intelligent is a constitutional one that is reviewed de novo.” *Rhoads*, 813 N.W.2d at 885. An invalid waiver and the corresponding denial of the right to counsel are “structural error[s]” that require reversal. *See Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009) (citing *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)) (acknowledging that “the United States Supreme Court has recognized that the denial of counsel is a structural error”); *see also State v. Chavez-Nelson*, 882 N.W.2d 579, 587 (Minn. 2016) (“Because the district court’s error was not a violation of [the appellant’s] constitutional right to counsel, we conclude that the error in this case does not fall into the very limited class of structural errors that require automatic reversal of a conviction.” (quotation omitted)).

Minnesota Rule of Criminal Procedure 5.04, subdivision 1(4), sets forth the procedure that a district court must follow when a defendant charged with a felony wishes to waive the right to counsel. The district court “*must* ensure” that the defendant “enter on

the record a voluntary and intelligent *written* waiver of the right to counsel.” Minn. R. Crim. P. 5.04, subd. 1(4) (emphasis added); *see also* Minn. Stat. § 611.19 (2022) (“[W]aiver shall in all instances be made in writing, signed by the defendant.”). If the defendant refuses to sign a written waiver, the district court *must* make a record of the defendant’s waiver of the right to counsel. Minn. R. Crim. P. 5.04, subd. 1(4); *see also* Minn. Stat. § 611.19 (“[I]f the defendant refuses to sign the written waiver, then the court shall make a record evidencing such refusal of counsel.”). A valid waiver of the right to counsel *must* include an advisory to the defendant of the “nature of the charges,” “all offenses included within the charges,” the “range of allowable punishments,” the facts that “there may be defenses” and that “mitigating circumstances may exist,” and “all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.” Minn. R. Crim. P. 5.04, subd. 1(4)(a)-(f).

The district court failed to obtain from Gant a written waiver of his right to counsel. The district court did not make a record of Gant’s waiver of the right to counsel. The district court did not advise Gant of any of the required information set forth in Minn. R. Crim. P. 5.04, subd. 1(4). Instead, the district court confirmed only that Gant was not under the influence of substances that would impact his decision-making, that Gant understood that the state would argue for sentencing to occur that day, and that Gant still wanted to discharge his counsel. Following this exchange, the district court granted Gant’s request to discharge his counsel and then conducted a sentencing hearing. The district court

therefore did not obtain from Gant a procedurally valid waiver of the right to counsel, pursuant to Minn. R. Crim. P. 5.04, subd. 1(4), before conducting the sentencing hearing.

The state argues that, notwithstanding the absence of a procedurally valid waiver, the facts and circumstances support a conclusion that Gant waived his right to counsel. A waiver of the right to counsel may withstand constitutional muster “if the circumstances demonstrate that the defendant has knowingly, voluntarily, and intelligently waived his right to counsel.” *State v. Haggins*, 798 N.W.2d 86, 90 (Minn. App. 2011) (recognizing that circumstances could demonstrate a valid waiver even if the district court does not obtain a written waiver); *see also Rhoads*, 813 N.W.2d at 886 (“A district court’s failure to conduct an on-the-record inquiry regarding waiver, however, does not require reversal when the particular facts and circumstances of the case demonstrate a valid waiver.”). The validity of the waiver depends on “the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.” *Worthy*, 583 N.W.2d at 275-76 (quotation omitted). “[T]he record must demonstrate among other things that the defendant’s waiver is made with eyes open.” *Rhoads*, 813 N.W.2d at 888 (quotation omitted). Accordingly, “a defendant should be made aware of the dangers and disadvantages of self-representation” and the district court “should comprehensively examine the defendant regarding the defendant’s comprehension of the charges, the possible punishments, mitigating circumstances, and any other facts relevant to the defendant’s understanding of the consequences of the waiver.” *Id.* at 885-86 (quotations omitted). Against this backdrop, we consider several circumstances to determine whether

Gant waived his right to counsel before the district court conducted the felony sentencing hearing.

Previous Representation by Counsel

We first consider the nature of Gant’s previous representation by counsel. *See State v. Garibaldi*, 726 N.W.2d 823, 828 (Minn. App. 2007) (recognizing that, in previous cases affirming waiver of counsel despite the district court’s failure to conduct on-the-record colloquy on the decision, the defendants had “either extensive contact with defense attorneys or stand-by counsel or both”). “When a defendant has consulted with an attorney prior to waiver, a [district] court could ‘reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.’” *Worthy*, 583 N.W.2d at 276 (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)).

It is true that, with the exception of his first appearance, Gant was represented by counsel up until the time that the district court considered his motion for plea withdrawal and sentencing. Gant stated on the record that he had spoken with counsel and another attorney about discharging counsel. But the record also shows that Gant and his counsel stopped communicating with each other. Gant’s counsel specifically requested to withdraw because Gant “refuses to communicate with counsel which has caused a breakdown of the attorney client relationship.” We cannot “reasonably presume” under these circumstances that Gant’s previous representation included a sufficient advisory of “the benefits of legal assistance and the risks of proceeding without it . . . in detail.” *Id.* (quotation omitted) (noting that the defendants “took full advantage” of their representation

before discharge). And there is no evidence in the record that Gant was advised by counsel of any of the considerations set forth in Minn. R. Crim. P. 5.04, subd. 1(4). *See Garibaldi*, 726 N.W.2d at 829 (citing *Worthy*, 583 N.W.2d at 276) (concluding that waiver of counsel was not valid and noting that the record was “silent regarding whether [the defendant] was sufficiently informed by previous counsel of the consequences of representing himself”). Accordingly, this consideration does not weigh in favor of a conclusion that Gant waived his right to counsel before the district court conducted the felony sentencing hearing.

Standby Counsel

We also consider whether Gant had the benefit of standby counsel. *See Garibaldi*, 726 N.W.2d at 829-30 (concluding that waiver of counsel was not valid and noting that the defendant was “not offered the benefit of standby counsel”); *Krejci*, 458 N.W.2d at 412-13 (concluding that waiver of counsel was valid and noting that the district court appointed the defendant’s second public defender as standby counsel); *Haggins*, 798 N.W.2d at 90-91 (concluding that waiver of counsel was valid and noting that the district court offered standby counsel). The district court did not offer Gant standby counsel for the sentencing hearing, and the record does not indicate that discharged counsel remained present at the sentencing hearing to aid Gant if needed. Therefore, this consideration does not weigh in favor of a determination that Gant waived his right to counsel before the district court conducted the sentencing hearing.

District Court Engagement

We also consider the district court’s statements to Gant about the right to counsel. Reminders by the district court of the right to counsel followed by repeated refusals of

representation may indicate a knowing and intelligent choice to proceed without counsel. *Cf. Burt v. State*, 256 N.W.2d 633, 635-36 (Minn. 1977) (concluding that a waiver was not adequately shown to be intelligent where the district court repeatedly advised defendant of his right to counsel and defendant refused but defendant was of lower-than-average intelligence and the court should have made a more detailed inquiry as to the defendant's capacity); *Krejci*, 458 N.W.2d at 412-13 (concluding that waiver of counsel was valid and noting that "[t]he trial court told defendant that if he changed his mind, he could have a public defender at any time"); Minn. R. Crim. P. 5.04, subd. 1(1) (stating that, as part of the notice of the right to counsel, "[t]he court must also advise the defendant that the defendant has the right to request counsel at any stage of the proceedings"). We may also consider a district court's confirmation of a defendant's decision to waive the right to counsel, offers of standby counsel, and explanation of the stakes in the proceeding. *Haggins*, 798 N.W.2d at 91.

The district court did not advise Gant of the consequences of discharging his counsel and proceeding pro se.² Gant was not represented by counsel at his first appearance. At that time, the district court advised Gant that he had "the absolute right to talk to an attorney before we do the next appearance or the next step of this case." Gant next appeared with

² At the plea hearing, which occurred about ten months before sentencing, the state informed the district court that a sentence for drug offense could result in a prison term of up to 153 months, and the district court informed Gant that convictions for both offenses would result in mandatory minimum sentences if Gant committed certain offenses in the future. We note that this information falls short of notifying Gant of the fact that "mitigating circumstances may exist" that could have resulted in a reduced prison term. Minn. R. Crim. P. 5.04, subd. 1(4)(e).

counsel appearing on a “limited basis” for one hearing only.³ The district court continued the matter and explained the benefit of securing counsel before substantive activity occurred in the case. The district court did not engage Gant at any other time about the right to counsel nor did it offer standby counsel to Gant.

Notably, the district court did not advise Gant of the consequences of discharging counsel given the stakes in the pending sentencing proceeding. The district court did not advise Gant that it may immediately proceed with sentencing without affording Gant additional time to obtain new counsel. Stated differently, the district court did not inform Gant that a likely consequence of discharging his counsel would result in Gant proceeding pro se at sentencing. And the district court did not inform Gant prior to proceeding with sentencing without counsel that he was facing a sentence far greater than that set forth in the plea agreement because he failed to appear at previous hearings. The district court’s minimal engagement with Gant about his constitutional right to counsel does not weigh in favor of a determination that Gant waived his right to counsel before the sentencing hearing.

Prior Experience

We also consider Gant’s familiarity with the criminal justice system, which under certain circumstances may diminish the need for a detailed, on-the-record colloquy regarding the choice to waive counsel. *See Worthy*, 583 N.W.2d at 276. Such circumstances may show that a defendant understood what was “at stake” at trial. *Krejci*,

³ Gant ultimately retained the attorney who represented him on a temporary basis at that hearing.

458 N.W.2d at 413 (noting that the defendant’s “letters to the court also show him to be an articulate, intelligent man who understood the legal system and what was at stake at his trial”).

Although the record reflects that Gant has a prior criminal history, the record is devoid of information suggesting that any prior criminal history informed Gant’s understanding of the consequences of proceeding pro se at sentencing *in this case*. Cf. *Haggins*, 798 N.W.2d at 89, 91 (noting that the defendant “on at least two occasions” stated that he had successfully represented himself in another matter and “that he would do so again” and proceeded pro se even though the district court explained the circumstances that made the current case different from the prior case). Thus, Gant’s prior experience with the criminal justice system does not weigh in favor of a determination that Gant waived his right to counsel before the sentencing hearing.

Accordingly, based on all of the above considerations and the facts and circumstances of this case, Gant did not knowingly, intelligently, and voluntarily waive his right to counsel before the district court conducted the felony sentencing hearing. Because the district court conducted a critical stage of a felony prosecution with a pro se defendant without first obtaining a procedurally valid waiver of the right to counsel, and the facts and circumstances here do not support a conclusion that Gant impliedly waived his right to counsel, the district court committed structural error requiring reversal. We therefore reverse Gant’s sentence and remand to the district court to conduct a new sentencing

hearing.⁴ At that hearing, Gant must either be represented by counsel, or the district court must obtain a valid waiver from Gant of the right to counsel.⁵

Finally, we recognize the challenges faced by a district court when confronted with compound motions from a pro se defendant that may include some combination of requests for a continuance, to discharge or substitute counsel, for plea withdrawal, or other substantive relief. We take this opportunity to emphasize best practices for a district court when presented with such circumstances.

⁴ Gant also asserts that the district court erred in imposing a sentence based on a criminal-history score that accounted for a federal offense without proof from the state that the offense was valid and that Gant was on federal supervised release at the time of the offense. Our review of the record shows that the state did not establish by a fair preponderance of the evidence that the federal offense should be included in Gant’s criminal-history score. *See State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006) (“The state must establish by a fair preponderance of the evidence that the prior conviction was valid, the defendant was the person involved, and the crime would constitute a felony in Minnesota.”); *see also* Minn. Sent’g Guidelines 2.B.5 (2018) (providing procedure for district court’s determination of how to count out-of-state convictions).

On remand, the state may supplement the record as to whether the offense is properly included in calculating Gant’s criminal-history score. *See State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008) (concluding that, on remand, the state was permitted to further develop the record on out-of-state convictions because the defendant did not object to the district court’s determination regarding the convictions), *rev. denied* (Minn. July 15, 2008); *State v. Griffin*, 336 N.W.2d 519, 525 (Minn. 1983) (holding that the state may prove the conviction by a copy of the conviction “certified as correct in accordance with [Minn. R. Evid.] 902 or testified to be correct by a witness who has compared it with the original” and, “[i]f a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given” as provided in Minn. R. Evid. 1005 (quotation omitted)).

⁵ We expressly note that our decision does not impact or implicate cases involving conduct by a defendant constituting conduct-related forfeiture of the right to counsel. *See State v. Jones*, 772 N.W.2d 496, 505 (Minn. 2009) (explaining forfeiture-of-counsel rules and holding that a defendant “forfeited his right to counsel” based on conduct that was “extremely dilatory”).

First, a district court should inquire of a defendant the precise nature of each motion or request and how the defendant wishes to proceed. *See State v. Paige*, 765 N.W.2d 134, 139 (Minn. App. 2009) (explaining that a district court must ascertain how a defendant wishes to proceed following discharge of counsel and then determine whether the defendant may proceed as requested). A request to discharge counsel and proceed pro se is not the same as a request to discharge counsel and seek substitute counsel. *See id.* Unlike a request to proceed pro se, a request to seek a continuance to obtain substitute counsel is “traditionally within the discretion of the trial judge.” *See id.* (quotation omitted). Clarity in how a defendant wishes to proceed will enable a district court to apply the correct legal standard given the particular request.

Second, a district court must obtain a voluntary and intelligent written waiver of the right to counsel from a defendant proceeding pro se in a felony prosecution. Minn. R. Crim. P. 5.04, subd. 1(4). A district court may obtain a waiver of counsel on the record only if the defendant refuses to sign such a waiver. *Id.*

Third, a district court must advise a defendant proceeding pro se in a felony prosecution of all of the considerations set forth in Minn. R. Crim. P. 5.04, subd. 1(4)(a)-(f), which includes but is not limited to “all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.”

We do not suggest that a defendant facing a felony prosecution cannot validly waive the right to counsel absent a written waiver or a waiver on the record showing that the defendant was advised of the considerations and facts set forth in Minn. R. Crim. P. 5.04,

subd. 1(4). Our caselaw supports the possibility that particularized facts and circumstances can show that a defendant has waived the right to counsel even in the absence of a procedurally valid waiver. *See, e.g., Worthy*, 583 N.W.2d at 275-76. And we acknowledge the existence of the “policy reasons for accepting less than strict adherence” with the requirements of Minn. R. Crim. P. 5.04, subd. 1(4), and “the very real time pressures present each day” in district court. *Garibaldi*, 726 N.W.2d at 831 (citing predecessor to Rule 5.04). But reliance on facts and circumstances to establish a valid waiver of a constitutional right is disfavored because, to ensure vindication of the defendant’s constitutional right to counsel, “the record must demonstrate among other things that the defendant’s waiver is made with eyes open.” *Rhoads*, 813 N.W.2d at 888 (quotation omitted). When a defendant challenges on appeal whether the facts and circumstances amount to a constitutionally valid waiver, we conduct an in-depth review of the specific facts and circumstances to determine whether that waiver was “made with eyes open.” *See Worthy*, 583 N.W.2d at 275-76 (quotation omitted) (“Whether a waiver of a constitutional right is valid depends upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.” (quotation omitted)). By contrast, “a thorough and careful waiver procedure will ultimately result in conservation of time and treasure, and will reduce the emotional toll extracted from all participants in the judicial system.” *Garibaldi*, 726 N.W.2d at 831. “[A]cceptance of an inadequate waiver invites not only appeal, but reversal and remand for a new trial.” *Id.* We therefore strongly encourage district courts to secure a waiver of the right to counsel in compliance with Minn. R. Crim. P. 5.04, subd. 1(4), to foreclose the possibility of structural error.

DECISION

We hold that a criminal defendant must either expressly or impliedly waive the right to counsel before proceeding pro se at a felony sentencing hearing. The district court committed structural error by conducting a felony sentencing hearing with a pro se defendant who did not expressly or impliedly waive the right to counsel. We therefore reverse and remand for a new sentencing hearing consistent with this opinion.

Reversed and remanded.